IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.236 Of 2000.

Date of decision: July 12th, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Chhotu Ram. ..... Respondent.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.C.B. Singh, Dy. Advocate General.

For the respondent: Mr.K.D. Sood, Advocate with Mr. B.N. Gupta Advocate.

Surinder Singh, J (oral):

On 26.4.1997, at about 5.00 a.m., at village Dugan, respondent Chhotu Ram was allegedly having caused grievous hurt to complainant Sukh Ram. Thus the matter was reported to the police vide Ext.PW6/B, on the basis of which FIR Ext.PW5/A was registered. After the medical examination of the respondent, the challan was put in the court, which was registered as Case No.270/1 of 1997, under Sections 325, 323 and 506 of the Indian Penal Code. After completing the trial, on 30.12.1999 a detailed judgment was passed by the Additional Chief Judicial Magistrate. The respondent was acquitted on the ground, firstly that the Roznamcha rapat Ext.PW6/B does not find mention about the fracture of the

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Whether reporters of local Papers may be allowed to see the judgment? Yes .

finger caused to the complainant by infliction of the stone blow given by the respondent. Secondly, the names of the alleged eye witnesses have not been mentioned in the First Information Report. Thirdly, there was sharp contradiction between the statements of complainant PW2 Sukh Ram and rapat roznamcha Ext.PW6/B, regarding date, time and place and the fact that he was rescued by S/Shri Jagdish Chand and Sarwan, who were incidentally present on the spot. Fourthly, the statement of the complainant before the court was improved on material particulars. The complainant has stated as PW2 that there was a case instituted against the respondent in Bilaspur, which was dismissed. Therefore, enmity between him and the respondent could not be ruled out, thus giving chance of concoction and exaggeration. Fifthly, the alleged eye witness Sarwan Kumar (PW3) and Jagdish Chand (PW4) appeared to have introduced by the complainant at the later stage, their interestedness could not be ruled out easily

Lastly, the certified copy of the challan Ext.DA, copy of the FIR Ext. DB, copy of the MLC Exts. DC and DD has shown that a criminal case was filed regarding the same incident by the respondents against the complainant which is pending in the court of Chief Judicial Magistrate, Bilaspur. Therefore, in view of these circumstances, the conviction of the respondent could not be sustained, accordingly the trial court acquitted the respondent.

I have reappraised the evidence on record. Both the parties i.e. the complainant and the respondent were Constables in the police department. From the documents

Exts. DA to DD, it is born out that the respondent also sustained injury in the same incident, which has not been explained by the prosecution. The alleged incident had taken place on 26.4.1997. The complainant was also medically examined on the same date, but qua Injury No.3. He was referred for the X-ray as indicated in Ext.PW1/A, but the X-ray was conducted on 12.5.1997, i.e. after about 16 days. The First Information report was instituted on 21.5.1997, i.e. after about 25 days of the alleged incident. Delay has not been explained at all. Therefore, in these circumstances, the reasons given by the trial court for acquitting the respondents are correct and are also born out from the record. Therefore, the appeal merits dismissal, which is accordingly dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 12th, 2007. **(Surinder Singh)**
(PDS) **Judge**.